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MAR 25 1965
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1964.

No. 1017.

THE INTERLAKE STEAMSHIP COMPANY,

Petitioner,

v.

MARCELLA R. NIELSEN, and STEPHEN O'HEARNE, as Successor to JOHN J. NEWMAN, Deputy Commissioner, Administering the Longshoremen's and Harbor Workers' Compensation Act,

Respondents.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals For the Sixth Circuit.

THOMAS V. KOYKKA,
McALISTER MARSHALL,
ROBERT B. PRESTON,
1144 Union Commerce Building,
Cleveland, Ohio 44114,
Attorneys for Petitioner.

Of Counsel:
ARTER, HADDEN, WYKOFF & VAN DUZER,
1144 Union Commerce Building,
Cleveland, Ohio 44114.

March 23, 1965.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—PHONE: 621-5647

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APPENDIX.

RELEVANT PORTION OF LONGSHOREMEN'S ACT.

Title 33 U. S. C. § 903; Act of March 4, 1927, c. 509, § 3, 44 Stat. 1426.

"§ 903. Coverage.

(a) Compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock) and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law. No compensation shall be payable in respect of the disability or death of—

(1) A master or member of a crew of any vessel, nor any person engaged by the master to load or unload or repair any small vessel under eighteen tons net; or

(2) An officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof.

(b) No compensation shall be payable if the injury was occasioned solely by the intoxication of the employee or by the willful intention of the employee to injure or kill himself or another."

OPINION, FINDINGS, AND ORDER OF DEPUTY COMMISSIONER.

Case No. 208-50.

UNITED STATES DEPARTMENT OF LABOR
BUREAU OF EMPLOYEES' COMPENSATION
Ninth Compensation District.

In the matter of the Claim for Compensation under the Longshoremen's and Harbor Workers' Compensation Act.

MARCELLA R. NIELSEN, widow of
CARL O. NIELSEN, deceased,

Claimant,

against

THE INTERLAKE STEAMSHIP COMPANY,

Self-insured Employer.

COMPENSATION ORDER.
AWARD OF COMPENSATION DEATH BENEFITS.

Such investigation with respect to the above-entitled claim having been made as is considered necessary, and formal hearing having been held in conformity with law, the Deputy Commissioner makes the following

FINDINGS OF FACT:

That on Saturday, January 10, 1959 and Sunday, January 11, 1959, and for sometime before those dates, the deceased Carl O. Nielsen was engaged in maritime employment for the employer as a shipkeeper of the SS ARCTURUS which was then winter-moored to a dock leased by the employer in Maumee Bay, Port of Toledo, Ohio in the Ninth Compensation District established under the provisions of the Longshoremen's and Harbor Workers'

Compensation Act; that the employer had in its employ other employees engaged in maritime employment as shipkeepers; that on said dates the employer was a self-insurer authorized as such under the Act by the Bureau of Employees' Compensation, United States Department of Labor; that the dock at which the SS ARCTURUS was moored was about 1,000 feet long; that said dock was longer than it was wide; that the SS ARCTURUS which was approximately 540 feet long, was moored with her starboard side to the westerly side of the dock with her bow headed in a northerly direction and extending approximately 40 to 50 feet beyond the outer end of the dock; that the forward mooring lines of the ARCTURUS led from the vessel to a bollard on the north end of the dock facing the bay, approximately 50 feet east of the dock edge at which the ARCTURUS lay; that the ARCTURUS' mooring lines consisted of two large manila lines, the bight of a steel mooring cable, an anchor chain that led from a hawse pipe near the stem of the vessel, and also the bights of two steel mooring cables that led from the forepart of the vessel to another bollard 50 feet farther to the eastward of the first-mentioned bollard; that as a shipkeeper for the employer the deceased had access to the dock and to his ship; that there was a roadway, usable and passable for automobiles, that extended from the entrance gate of the dock to the end of the dock facing the bay; that the said dock and the roadway on it provided the path of ingress and egress with respect to the SS ARCTURUS and with respect to the shore end of the vessel's mooring lines; that beginning at about 8 to 10 feet from the outer end of the dock there is a change in the grade of the roadway in the form of a slight incline leading to the outer end of the dock; that access to the ARCTURUS proper was by means of a boarding ladder located toward the after end of the ves-

sel some 380 feet from the outer or bay end of the dock; that the duties of a shipkeeper, including deceased's, are those of a caretaker, and include such custodial duties as seeing that nobody breaks in, that the doors are locked, that there is a light on the outboard side of a vessel for the safety of other ships whenever the bow end of the shipkeeper's vessel extends into navigable waters, seeing that no fires start from smolder as a result of maintenance work done by outside jobbers or otherwise, inspecting the mooring lines and notifying the port captain, his superior in command, if change or adjustment in the mooring lines is made necessary by reason of weather or otherwise; that the lights of an automobile could be of assistance to a shipkeeper in the inspecting of the shore end of the mooring lines; that the responsibility of a shipkeeper for his duties is on a 24 hour per day, 7 day per week basis; that there was provision for the deceased to live aboard the ARCTURUS, with adequate facilities for sleeping, cooking and heating; that employer's shipkeepers, including the deceased, were permitted to leave their vessels on occasions to go to their homes and for meals; that the deceased habitually ate his supper at home, which habit was known to his superior in command and was perfectly agreeable to said port captain; that on the aforesaid Saturday night of January 10, 1959, between 9:00 and 10:00, the deceased, after having had his supper at home, left home by his automobile to proceed to the SS ARCTURUS; that on Monday, January 12, 1959, the body of deceased was recovered from the waters of the bay at the outer end of the dock at which the ARCTURUS was moored; that at the time the body was recovered the deceased was seated in the driver's seat of his automobile with his hands on the wheel and his foot on the brake; that when the body was so recovered the deceased's watch

was stopped at 3:15 o'clock; that said automobile with deceased in it was brought up from the bottom of the bay at the outer end of said dock at a point approximately 25 feet east of that edge of the dock that faced the ARCTURUS; that the top of said recovered automobile was dented in; that the employer did not furnish transportation on the dock between the entrance gate and the outer or bay end; that shipkeepers of the employer, including deceased, as a matter of convenience did, from time to time, travel to and from work by means of private automobile; that the weather on the evening of January 10, 1959 and the early morning hours of January 11, 1959 was clear and cold, with frost; that in the early morning hours of Sunday, January 11, 1959 the aforesaid Carl O. Nielsen suffered injury when, striking the aforesaid mooring lines enroute, he drove his car over and off the outer end of the dock and into the ice and water of the aforesaid Maumee Bay; that as a result of said injury the aforesaid Carl O. Nielsen sustained skull fractures and brain damage which caused his death in the early morning hours of January 11, 1959; that at and before the time of the aforesaid injury the said Carl O. Nielsen had been suffering from heart disease but that said heart disease was not responsible for his death nor did it play any part in his death; that shortly before his death the said Carl O. Nielsen had imbibed some six to eight ounces of whiskey but had not thereby lost control of his senses and the fatal injury was not occasioned solely by the intoxication of the employee; that the aforesaid fatal injury occurred on navigable waters of the United States; that said fatal injury arose out of and in the course of deceased's employment for the employer; that at the time of the fatal injury the average weekly wage of the deceased was in excess of $81.00 per week; that notice of the fatal injury

was not given within thirty days, but that the employer had knowledge of the fatal injury and the employer has not been prejudiced by failure to give notice; that the employer made no report of the fatal injury to the Bureau or official charged with the administration of the Longshoremen's and Harbor Workers' Compensation Act; that on behalf of herself as widow and on behalf of Carl O. Nielsen, Jr. and Michael C. Nielsen as minor children of the deceased, Marcella R. Neilsen filed due claim for compensation death benefits as a result of the fatal injury; that the said Marcella R. Neilsen was born on July 16, 1920, was married to the deceased on February 14, 1948, and is the widow of the deceased entitled to compensation death benefits on her own behalf of $28.35 per week, and to compensation death benefits on behalf of the aforesaid two minor children of deceased at the rate of $12.15 per week for each child, making a total compensation death benefit of $52.65 per week; that the said minor child Carl O. Nielsen, Jr. was born October 10, 1948; that the said minor child Michael C. Nielsen was born on December 9, 1952; that the said widow Marcella R. Neilsen paid the burial bill in the amount of $1,149.34; that the employer is liable for funeral expenses of deceased not to exceed $400.00; that from January 12, 1959 to December 23, 1962 inclusive, a period of 206 weeks, there has accrued compensation death benefits amounting to $10,845.90, none of which has been paid; that J. Harold Traverse is the attorney for the claimant; that an amount of $2,750.00 is approved as a fee for legal services rendered to the claimant.

Upon the foregoing facts the Deputy Commissioner makes the following

AWARD:

That the employer The Interlake Steamship Company shall pay to the claimant an amount of $400.00 on account of the funeral expenses;

That the employer The Interlake Steamship Company shall pay to the claimant the accrued compensation of $10,845.90, less an amount of $2,750.00 which is to be deducted from the aforesaid $10,845.90 and paid directly to J. Harold Traverse, Attorney, making a net amount payable to the claimant at this time of $8,095.90;

That effective December 24, 1962 the employer The Interlake Steamship Company shall pay to the claimant, periodically, compensation death benefits at the rate of $52.65 per week, said periodic payments to continue in accordance with the provisions of the Longshoremen's and Harbor Workers' Compensation Act.

Given under my hand at Cleveland, Ohio this 26th day of December, 1962.

JOHN J. NEWMAN,

Deputy Commissioner,
Ninth Compensation District.

OPINION OF THE DISTRICT COURT.

No. C 63-45.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OHIO
EASTERN DIVISION.

THE INTERLAKE STEAMSHIP COMPANY,

Plaintiff,

vs.

JOHN J. NEWMAN, Deputy Commissioner etc., and MARCELLA R. NIELSEN,

Defendants.

MEMORANDUM OPINION.

JONES, *J.*:

Plaintiff, The Interlake Steamship Company, filed a complaint for the purpose of reviewing, suspending and setting aside an order for the payment of death compensation made by defendant John J. Newman, Deputy Commissioner, by virtue of the authority conferred upon him by the provisions of the Longshoremen's and Harbor Workers' Compensation Act, Title 33 U. S. C. A., Sections 901-950. The matter now has come on for final determination after oral hearing on motions for summary judgment filed by each defendant. The following is a summary of the Deputy Commissioner's findings of fact and conclusions of law as to the death of Carl O. Nielsen.

Carl O. Nielsen, the deceased, was employed by the plaintiff as a shipkeeper on the SS ARCTURUS. His duties were on a twenty-four hour per day, seven days per week, basis. The deceased was permitted to go home for meals,

but he would sleep on board ship. On Saturday night, January 10, 1959, between 9:00 and 10:00 p.m., the deceased left home after supper. His body was found on Monday, January 12, 1959, behind the wheel of his car in twenty-five feet of water east of the edge of the dock where the ARCTURUS was moored. The top of his car was caved in, and as a result of his car landing upside down on the ice, the decedent suffered a fractured skull.

The dock at which the ARCTURUS was moored was about 1,000 feet long, the ARCTURUS was approximately 540 feet long, and moored so that about 50 feet of her bow extended beyond the outer end of the dock. The forward mooring lines led from the ship to bollards on the end of the dock, 50 feet and 100 feet from the edge of the dock at which the ARCTURUS lay. A roadway on the dock was used by the decedent to drive to his ship. The decedent would board the ARCTURUS by a boarding ladder some 380 feet from the bay end of the dock.

The duties of the decedent as shipkeeper included such custodial duties as seeing that nobody broke in, that doors were locked, lights were on on the outboard side of the ship, seeing no fires started, and inspecting mooring lines. The Commissioner found that the lights of an auto could be of assistance to the shipkeeper in inspecting the shore end of the mooring lines.

The Commissioner found that in the early morning hours of Sunday, January 11, 1959, the decedent suffered injury when, striking the mooring lines enroute, he drove his car over and off the outer end of the dock into ice and water. As a result, the decedent sustained a skull fracture and brain damage which caused his death. The deceased suffered from a heart disease but the disease was not responsible for his death nor did it play any part in his death. Shortly before his death, the decedent imbibed

some six to eight ounces of whiskey, but had not thereby lost control of his senses, and the fatal injury was not occasioned solely by his intoxication. The Commissioner further found that the fatal injury occurred on navigable waters and arose out of and in the course of his employment.

The Commissioner found for Marcella Nielsen, the widow, in the amount of $10,845.90, accrued compensation and $400 for accrued funeral expenses. After denying plaintiff's motion for an interlocutory injunction, these amounts were paid to the defendant, Marcella Nielsen. The decedent had two minor children.

The plaintiff opposes defendants' motions for summary judgment on two grounds. First, plaintiff asserts that Carl Nielsen's death did not arise out of his employment as required by Section 902(2) of the Longshoremen's and Harbor Workers' Compensation Act. Secondly, the plaintiff asserts that Carl Nielsen's death did not occur upon the navigable waters of the United States as required by Section 903(a) of the Act.

The Deputy Commissioner's finding that the decedent's death arose out of and in the course of his employment cannot be disturbed. Section 920 of the Act creates a presumption that the claim comes within the provisions of the Act. However, if the employer has offered evidence to show that the injury did not arise out of the employee's employment, then the presumption falls out of the case. If the evidence permits an inference either way, the Deputy Commissioner alone is empowered to draw the inference. His decision as to the weight of the evidence may not be disturbed. *Del Vecchio v. Bowers,* 296 U. S. 280 (1935); *Marra Bros. v. Cardillo,* 154 F. 2d 357 (1946). The facts that Carl Nielsen drove his car onto the dock to a point where he boarded his ship, some 380 feet from the

bay end of the dock, every evening; that he was on twenty-four hour duty; that one of his duties was to inspect the mooring lines are substantial findings of fact to support the inference made by the Deputy Commissioner that his death arose out of and in the course of his employment.

As a matter of independent judgment, I would not make this inference. However, as the Supreme Court held in *O'Leary v. Brown-Pacific-Maxon, Inc.*, 340 U. S. 504 (1951), even though the evidence did not compel the inference made by the Deputy Commissioner, the findings should be accepted unless they are unsupported by substantial evidence on the record considered as a whole.

Further, the standard applied by the Supreme Court in the *O'Leary* case was a most liberal one. There the court said:

> "Workmen's compensation is not confined by common-law conceptions of scope of employment. The test of recovery is not a causal relation between the nature of the employment of the injured person and the accident. Nor is it necessary that the employee be engaged at the time of the injury in activity of benefit to employer. All that is required is that the 'obligations or conditions' of employment create the 'zone of special danger' out of which the injury arose."

The finding then of the Deputy Commissioner is conclusive on this issue even though the evidence permitted conflicting inferences.

The Deputy Commissioner found that Carl Nielsen's death resulted from an injury occurring upon the navigable waters of the United States. Section 19(a) of the Act gives the Deputy Commissioner "full power and authority to hear and determine all questions in respect of" claims for compensation. Section 21(b) gives the Federal District Courts power to suspend or set aside, in whole or in

part, compensation orders if "not in accordance with the law."

Ever since *Crowell v. Benson,* 285 U. S. 22 (1932), was decided, the majority of the courts have rejected the application of the doctrine that the findings of the Commissioner could not be deemed conclusive when they related to facts on which the jurisdiction of the board to act in the first place depended. Thus the courts have left jurisdictional facts subject to the same review that is applied to all facts. That is, the Commissioner's order may be reversed only if it is not in accordance with the law, i.e., not supported by substantial evidence. *O'Leary v. Brown-Pacific-Maxon, Inc., supra; Norton v. Warner,* 321 U. S. 565 (1944). *Crowell v. Benson* suggests a distinction between the treatment of statutory and constitutional jurisdictional facts. The constitutional fact issue arises when Congress, in a piece of legislation, has pushed its constitutional powers to the limit. The Crowell decision held the Longshoremen's and Harbor Workers' Act

> "does not expressly preclude the court, in proceedings to set aside an order as not in accordance with law, from making its own examination and determination of facts whenever that is necessary to enforce constitutional rights. * * *"

However, it is not necessary here to determine what validity remains in the Crowell decision as to the scope of judicial review of a finding that an injury occurred on navigable waters. It is my considered judgment that, as a matter of law, the undisputed facts found by the Deputy Commissioner do not support the Commissioner's finding that the injury occurred upon navigable waters.

For the Act to apply, the employee must be injured under the same conditions concerning locality which are required to be found as the basis of admiralty jurisdiction

in tort generally. Comparing *Smith v. Taylor*, 276 U. S. 179 (1927), decided before the passage of the Federal Workmen's Compensation Act, with *Minnie v. Port Huron Terminal Co.*, 295 U. S. 647 (1935), decided after the passage of the Act, it is seen that the test of locality played the same part in the State compensation case that it did in the determination of tort jurisdiction in admiralty. For the purpose of determining whether an injury occurred upon navigable waters, thus within admiralty jurisdiction and within the scope of the Harbor Workers' Act, the test to be applied is the test of admiralty jurisdiction in tort cases. *Ford v. Parker*, 52 F. Supp. 98 (1943), and *L'Hote v. Crowell*, 54 F. 2d 212 (1932), reversed on other grounds in 286 U. S. 529 (1932), where the court cites and follows *Smith v. Taylor* and *The Strabo*, 90 Fed. 110 (1898), affirmed 98 Fed. 998 (1900).

The test of admiralty jurisdiction in tort cases has had a long and conflicting history. It is not necessary for me to review the early history for this has been well done by Judge Thomas in *The Strabo, supra.* In that case the workman attempted to leave the ship by means of a ladder. Because of the master's negligence, the workman fell and was thrown to the dock and injured.

The place of injury as the test for admiralty jurisdiction was rejected by Judge Thomas when he said:

> "It does not seem that it was the intention in the latter cases to lay down the rule that the physical injury must be completed on the water to give courts of admiralty jurisdiction, irrespective of the locality where the breach of duty first operated upon the person injured."

Since the whole wrongful agency was put in motion and took effect on the ship, the court held there was admiralty jurisdiction.

The place of culmination of an injury, whether it be by drowning or by striking the dock, is not determinative of whether admiralty has jurisdiction. *Smith v. Taylor, supra, Minnie v. Port Huron Terminal Co., supra,* and *Admiral Peoples,* 295 U. S. 649 (1935). Nor is it determinative that the breach of duty originated on the ship, *Smith v. Taylor, supra.* The test for admiralty jurisdiction, which in a difficult and close case makes the most sense and is the least arbitrary, is the test laid down by Judge Thomas in *The Strabo* case when he said:

> "The more consistent rule seems to be that a court of admiralty has jurisdiction when the negligent act or omission, wherever done or suffered, takes effect, and produces injury to the person or property of another, on navigable waters."

Stated another way, jurisdiction in admiralty depends upon the locality of the injury, and locality of the injury is the "locality where the breach of duty first operated upon the person injured." *The Strabo.* This case has been cited and followed in *L'Hote v. Crowell* and *Admiral Peoples, supra.*

In a compensation case where we are not concerned with breach of duty, I think the test must be that if the impetus which put in motion the sequence of events resulting in the fatal accident came from the land, and operated on the person injured while on land, then there can be no jurisdiction and no valid award.

This view of the matter is further fortified by the reaction of the court as evidenced by a question propounded to Government counsel during oral argument, which was in substance, "if a harbor worker such as Carl Nielsen were working on the deck of a moored vessel and through no fault upon the part of the employer, but by mischance, fell from the deck to the dock, would the in-

jury have occurred on navigable water or upon the land, for the purpose of this Act?" In my judgment it would have been an injury occurring upon navigable water, and covered by the Act.

Being mindful of the broad purposes of the Act, and the liberal construction to be given its provisions, together with the weight residing in the Deputy Commissioner's findings of fact, it is my considered judgment that assuming facts as found by the Commissioner to be true, they do not support the legal conclusion that Carl Nielsen's fatal injury occurred upon navigable waters of the United States.

Carl Nielsen drove off the dock and crushed his skull on the ice below. Whatever the reason that caused him to drive off the dock, whether in the performance of his duties as the Commissioner found, or whether he was negligent or intoxicated, the occurrence or the condition that initiated and brought about the fatal accident occurred on the dock.

Since this was not an injury occurring upon navigable waters, the Commissioner was without jurisdiction to make a valid award.

Therefore, it is ordered that defendants' motions for summary judgment are hereby denied, and judgment is entered for the plaintiff on its complaint to suspend and set aside the compensation order.

It is further ordered that a permanent injunction be issued restraining the Deputy Commissioner from further enforcing the compensation order, award of death benefits, and that no further payments to the claimant under the Deputy Commissioner's order shall be required to be made by the plaintiff.

It is also ordered that a mandatory injunction be issued directing the Deputy Commissioner to set aside the

findings of fact heretofore made, and that the Deputy Commissioner make an order dismissing and disallowing the claim of defendant Marcella R. Nielsen.

JONES,
United States District Judge.

September 12, 1963.

SUPPLEMENTAL OPINION OF THE DISTRICT COURT.

JONES, *J.*:

Although the memorandum heretofore filed, dated September 12, 1963, contains reference to authorities relied upon to support the conclusion reached, it does not succinctly state my interpretation of the Longshoremen's and Harbor Workers' Compensation Act, and perhaps my judgment better would be understood if it were supplemented by the following.

The Compensation Act applies to a longshoreman or harbor worker injured while engaged in the performance of some duty on navigable waters and while acting within the scope of his employment. The decedent here was performing no duty on navigable waters and from what he did it could not conceivably be inferred that he had any purpose or intention of doing anything, or going, upon navigable waters at the time of his fatal injury.

JONES,
United States District Judge.

September 16, 1963.

OPINION OF THE COURT OF APPEALS.

Nos. 15705-15706

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No. 15705

THE INTERLAKE STEAMSHIP COMPANY,

Plaintiff-Appellee,

v.

MARCELLA R. NIELSEN,

Defendant-Appellant.

No. 15706

THE INTERLAKE STEAMSHIP COMPANY,

Plaintiff-Appellee,

v.

STEPHEN O'HEARNE, as successor to JOHN J. NEWMAN, Deputy Commissioner Administering the Longshoremen's and Harbor Workers' Compensation Act,

Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Ohio.

Decided December 3, 1964.

Before: WEICK, Chief Judge, EDWARDS, Circuit Judge, and PRETTYMAN, Senior Circuit Judge.[1]

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[1] Senior Circuit Judge E. Barrett Prettyman of the District of Columbia Circuit sitting by designation.

EDWARDS, Circuit Judge. The claimant-appellant in this appeal is the wife of the deceased shipkeeper of the SS ARCTURUS, owned by The Interlake Steamship Company, appellee.

The ARCTURUS was berthed for the winter of 1959 at a Lake Erie dock. In the course of his employment decedent drove his car off the end of the dock where his ship was berthed. He died of a skull fracture occasioned by impact upon the frozen waters of Lake Erie. Lake Erie is, of course, part of the navigable waters of the United States of America and hence part of its admiralty jurisdiction.

Here an award of compensation under the Longshoremen's and Harbor Workers' Compensation Act was entered after hearing by a Deputy Commissioner. Interlake thereupon brought proceedings to attack the compensation award before the United States District Court for the Northern District of Ohio. After hearing the District Judge set the award aside on the sole ground that the fatal injury did not occur upon "navigable waters."

As we see this case, decedent broke his skull on that very substance.

Decedent Nielsen had as part of his responsibility checking the mooring lines of his vessel both day and night, and the testimony at hearing before the Deputy Commissioner administering the Longshoremen's and Harbor Workers' Compensation Act indicated that he frequently did this by automobile on the roadway on the dock. The ARCTURUS was 550 feet long, and she was berthed so that 50 feet of her bow extended beyond the end of the dock.

Nielsen, as sole custodian of the ship, was on duty twenty-four hours per day. He slept on board; but was allowed to go home for his meals.

On the night of January 10, 1959, Nielsen left home after supper. His body was found Monday, January 12, behind the wheel of his car in 25 feet of water beyond the end of the dock where the SS ARCTURUS was berthed. The top of his car was caved in as a result of landing upside down on the ice and an autopsy showed that Nielsen had died as a result of a fractured skull.

The hearing developed no other decisive facts, and the Deputy Commissioner found that Nielsen had been killed in the course of his employment. This finding is uncontested on this appeal.

On review before the United States District Court the Interlake Steamship Company contended, among other things, that the award was invalid since the injury did not take place within the admiralty jurisdiction of the United States of America.

This proceeding resulted in the adverse finding by the District Judge to which we have referred.

The applicable statutory provision is:

> "§ 903. *Coverage*
>
> "(a) Compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any drydock) * * *." 33 U. S. C. § 903(a).

If this language and the observation with which we have opened this opinion seem simple, nothing else about the interpretation of this statute is.

In our present case the District Judge in reciting the facts said: "Carl Nielsen drove off the dock and crushed his skull on the ice below." But he also found as a matter of law that these stark facts put Nielsen outside of admiralty jurisdiction:

> "In a compensation case where we are not concerned with breach of duty, I think the test must be that if the impetus which put in motion the sequence of events resulting in the fatal accident came from the land, and operated on the person injured while on land, then there can be no jurisdiction and no valid award."

In this holding the District Judge relied upon a series of cases wherein under quite different fact situations judicial language could be read as giving support to his view. *The Admiral Peoples,* 295 U. S. 649 (1935); *L'Hote v. Crowell,* 54 F. 2d 212 (C. A. 5, 1931), *reversed on other grounds,* 286 U. S. 528 (1935); *Minnie v. Port Huron Terminal Co.,* 295 U. S. 647 (1935); *Smith & Son v. Taylor,* 276 U. S. 179 (1928); *The Strabo,* 98 Fed. 998 (C. A. 2, 1900).

Of these cases, two were actions based on events which preceded the effective date of the Longshoremen's and Harbor Workers' Compensation Act in 1927. All preceded adoption of the Admiralty Extension Act in 1948.[2] All preceded the latest authoritative statement of the United States Supreme Court concerning admiralty jurisdiction as applicable to the Longshoremen's and Harbor Workers' Compensation Act in *Calbeck v. Travelers Insurance Co.,* 370 U. S. 114 (1962).

It should also be noted that four out of five of these same cases actually upheld admiralty jurisdiction. In the other case, *Smith & Son v. Taylor, supra,* the court's opinion affirmed a state compensation award (no federal act then being effective). The holding denied that "the case is *exclusively* within admiralty jurisdiction" as claimed by appellants therein. *Smith & Son v. Taylor, supra* at 182. (Emphasis added.)

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[2] Title 46 U. S. C. 740.

We also note that there are cited to us a series of somewhat more modern cases which support appellant's view to a greater or lesser degree. *Thomson v. Bassett*, 36 F. Supp. 956 (W. D. Mich. 1940), *aff'd without opinion*, 1942 Am. Mar. Cas. 184; *Pure Oil Company v. Snipes*, 293 F. 2d 60 (C. A. 5, 1961); *Weinstein v. Eastern Airlines, Inc.*, 316 F. 2d 758 (C. A. 3, 1963), *cert. denied*, 375 U. S. 940 (1964). None of these, however, is directly in point; and these, too, may suffer from some legal obsolescence as a result of the factors noted above.

Even before the *Calbeck* decision textwriters on admiralty had noted the obsolescence of many older precedents in the case law pertaining to longshoremen's and dock workers' injuries:

> "The radical reconstruction of maritime personal injury law since 1940 has made much of the older case law of little more than antiquarian interest. The volume of personal injury litigation since 1945, and particularly since 1950, has been so great that exhaustive citation of recent lower court cases would be an almost impossible task. These cases were decided against a rapidly changing background and many of them were of merely transitory interest; since the Supreme Court has claimed the field of maritime personal injury litigation as its own, lower court decisions have suffered from rapid technological obsolescence. Thus exhaustive citation to them would be fruitless and unhelpful. * * *" [3]

While the Admiralty Extension Act of 1948 obviously was not designed directly to affect the Longshoremen's and Harbor Workers' Compensation Act, it did serve to make clear that admiralty jurisdiction could extend to damage

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[3] GILMORE and BLACK, The Law of Admiralty (1957), Chapter 6, Rights of Seamen and Maritime Workers; Recovery for Death and Injury, sec. 6-5, n. 12, page 253.

caused on land by maritime events, although early case law had held to the contrary. (See *Cleveland Terminal & Valley R. R. Co. v. Cleveland Steamship Co.*, 208 U. S. 316 (1908); *State Industrial Commission of New York v. Nordenholt Corp.*, 259 U. S. 263 (1922)).

Much more to the point in our instant situation is the latest authoritative interpretation of the extent of admiralty jurisdiction under the Longshoremen's and Harbor Workers' Compensation Act made by the United States Supreme Court in *Calbeck v. Travelers Insurance Co., supra.*

Discussing this statute the Court said:

> "There emerges from the complete legislative history a congressional desire for a statute which would provide federal compensation for all injuries to employees on navigable waters"; *Calbeck v. Travelers Insurance Co., supra* at 120. (Footnote omitted.)

The Supreme Court opinion in Calbeck then quoted with approval a Fifth Circuit Court opinion [*DeBardeleben Coal Corp. v. Henderson,* 142 F. 2d 481 (C. A. 5, 1944)] commenting on the "State law" provision:

> "'* * * It is sufficient to say that Congress intended the compensation act to have a coverage coextensive with the limits of its authority and that the provision "if recovery * * * may not validly be provided by State law" was placed in the act not as a relinquishment of any part of the field which Congress could validly occupy but only to save the act from judicial condemnation, by making it clear that it did not intend to legislate beyond its constitutional powers. * * * In the application of the act, therefore, the broadest ground it permits of should be taken.'" *Calbeck v. Travelers Insurance Co., supra* at 130.

The Court then reached a conclusion which we read as rejecting many of the past decisions dealing with the limits of state versus admiralty jurisdiction:

> "In sum, it appears that the Longshoremen's Act was designed to ensure that a compensation remedy existed for all injuries sustained by employees on navigable waters, and to avoid uncertainty as to the source, state or federal, of that remedy. Section 3(a) should, then, be construed to achieve these purposes." *Calbeck v. Travelers Insurance Co., supra* at 124.

It seems obvious to us that the trend of case law, the impact of the Admiralty Extension Act, and the effect of *Calbeck* have all pointed in the direction of expanding the boundaries of admiralty jurisdiction toward land. It does not require any great clairvoyance to hold that at present admiralty jurisdiction clearly encompasses the navigable waters immediately adjacent to a dock.[4]

If *Calbeck* holds (and we think it does) "that Congress intended the compensation act to have a coverage coextensive with the limits of its authority," then there can be no doubt about the outcome of this appeal. No one asserts that claimant was killed (or injured) until the impact on the frozen substance of the navigable waters at the end of the dock. The fact which impressed the District Judge—that the impetus which propelled claimant onto the ice had a land-based origin—does not alter the fact that the situs of his injury and death was clearly within the scope of admiralty jurisdiction.

Reversed for entry of a compensation order in accordance with the award of the Deputy Commissioner.

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[4] In this regard we have considered and rejected language relied upon by appellee from *Atlantic Stevedoring Co. v. O'Keeffe*, 220 F. Supp. 881 (S. D. Ga. 1963), finding this District Court opinion neither binding nor persuasive.

JUDGMENT OF THE COURT OF APPEALS (No. 15,705).

(Filed Dec. 3, 1964.)

Appeal from the United States District Court for the Northern District of Ohio.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Ohio, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby reversed for entry of a compensation order in accordance with the award of the Deputy Commissioner.

It is further ordered that defendant-appellant recover from plaintiff-appellee the costs on appeal, as itemized below, and that execution therefor issue out of said District Court.

Entered by order of the Court.
s/ CARL W. REUSS,
Clerk.

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s/ CARL W. REUSS,
Clerk.

ORDER OF THE COURT OF APPEALS DENYING PETITION FOR REHEARING (Nos. 15705-06).

(Filed January 12, 1965.)

Before: WEICK, Chief Judge, EDWARDS, Circuit Judge, and PRETTYMAN, Senior Circuit Judge.

On consideration of the petition for rehearing filed in the above-styled matter, and the brief filed in support thereof, said petition is hereby DENIED.

ENTERED BY ORDER OF THE COURT:
s/ CARL W. RUESS,
Clerk.